

Mike Burns

From: John Anderson
Sent: Monday, May 23, 2011 2:43 PM
To: John Anderson
Subject: Update on Albanian election
Attachments: MFA information on CEC Proceedings.pdf

Greetings all, and forgive the interruption. This, like my other emails to you, is on background.

The final result in the May 8 election for Mayor of Tirana are apparently going to be announced in the near future by Albania's Central Election Commission. I've attached here a note that the Foreign Ministry sent out to people from the international community in hopes it will help clarify the law and to keep you informed. In sum:

The vote count, as you know, has been hotly contested. An early tally showed the Socialist incumbent, Edi Rama, with a 10-vote lead; but the Central Election Commission, in a 4-3 ruling, decided to include ballots that had mistakenly been dropped by voters on Election Day into wrong boxes (for instance, if a voter dropped the ballot for mayor in the box for the city council race) in the final tally. The decision to include these mis-cast votes has been the subject of dispute.

The electoral laws of Albania envision election disputes and lay out an approved process for dealing with them, and the hope is that any aggrieved candidates and parties will pursue the legal process for contesting the final results after the CEC announces them.

Like a lot of electoral laws, Albania's is a bit convoluted. If a party wants to challenge the results, it must first file an appeal with the CEC itself within three days of the CEC's final election decision. The CEC then has 10 days to review the complaint and make a ruling. If a party is unhappy with that ruling, it has five days to appeal the decision to the Electoral College of the Court of Appeals in Tirana, and the Electoral College must rule within 10 days. The five members of the Electoral College, all judges, are selected by lottery. The EC's decision is final.

As I've said before, hot, divisive elections are not unique to Albania. But every international observer that I have seen is urging Albanians to follow the approved process of appeal and to adhere to the rule of law. That is also the government's fervent wish.

One last plea on my end: There is NOT now, nor has there ever in this race been a "recount," which implies that all the votes are being counted over again.

Hope this helps. Cheers.....John

The Podesta Group provides representation to the Government of Albania. Additional information is on file with the US Justice Department.

USD/REGISTRATION UNIT
2011 MAY 23 PM 3:01

Dear Sir/Madam,

In advance of the CEC decision regarding the ballots misplaced in the boxes for other offices, we thought this confidential memo on the procedures of the CEC and the CEC when acting as the Tirana CEAZ, would be helpful and we wanted to pass along this confidential memo on the election process since we have heard that many of you have questions on how the process works in Albania.

Please find it both attached and in text below.

Kindest Regards,

The Ministry of Foreign Affairs
Republic of Albania

The Central Election Commission (CEC) is the highest state election administration body, of a permanent nature. Middle-level commissions are of a temporary nature and are established by the CEC prior to each election. They in turn establish polling station commissions, which are of a temporary nature too. Middle and lower level commission are all subordinate to the CEC, which has power to appoint and dismiss their members, provide obligatory instruction and decisions, controls and directs their work, reviews their decision-making and take disciplinary measures on all levels. These lower commissions exist to assist the CEC in the proper administration of elections.

The Electoral Code approved consensually by a vast majority of all parties in Parliament, in December 2008, reduced the number of zone commissions from 100 for parliamentary Elections and 384 for local elections to 66 Commission Electoral Administration Zones (CEAZ) for all elections. Every municipality and commune in Albania, and each borough in Tirana (there are 11 boroughs in Tirana) is each only covered by one CEAZ. However, since there must be an overall CEAZ to cover the municipality of Tirana as a whole, the CEC is bound by the Electoral Code to act as the CEAZ for issues that affect Tirana as a whole (ie Mayor and Council) including tabulating the results for the city as a whole. The responsibilities of a CEAZ are provided by article 33 of the Electoral Code. While a CEAZ for a borough of Tirana can register candidates and tabulate the result for the respective borough, it cannot do so for the Mayor and Council of Tirana, as it is only 1/11 of Tirana Municipality. For Tirana Municipality elections, borough CEAZs are only the 11 administrative aids of the CEC and not the final CEAZ.

The law empowers the CEC with the competencies of the CEAZ for Tirana. Candidates for 8 May race were registered with the CEC acting as the CEAZ for Tirana. A unanimous 7 to 0 vote confirms that the CEC acts as the Tirana

CEAZ since only CEAZs can register candidates and also tabulates results for Tirana municipality Mayor and Council. The tabulation of results is done based on the 11 borough CEAZ tabulations, subject to CEC's - acting as the CEAZ-detailed verification of correct reporting of all Tirana polling station tabulations.

The Electoral Code provides clearly a hierarchical structure for election administration. It leaves little power to polling station commissions and more decision-making to CEAZs that cover entire municipalities in the direction of the election process and especially the count. The law also provides a mechanism of moving through the decision-making authority, in case lower level commissions fail to act or decide on matters required by the law. The CEC acting as the Tirana CEAZ is on top of such chain of command, and has the power to overrule lower level decisions, borough CEAZ decisions, in case it finds their decisions illegal, or orders them to act in case of their failure to do so.

There are two types of administrative review. The first is conducted by a CEAZ, either a borough CEAZ or the CEC acting as the CEAZ for Tirana, and the second by the CEC acting as the CEC.

1- A CEAZ is empowered by law to review complaints during the pre-election phase, Election Day and during the count, on issues arising in the electoral zone under its jurisdiction. The CEAZ for Tirana would review any of these complaints that dealt with the city as a whole.

2- After the tabulation of results for an election zone by a CEAZ, in this case after the CEC acting as the Tirana CEAZ has tabulated the results, its decision can be reviewed only through a post-election appeal. The appeal can be presented only after results of the election zone are tabulated and are first lodged with the CEC, which adjudicates it with a competence of a quasi-court, still being an administrative review. CEC's decisions are reviewed by the Electoral College of the Court of Appeals of Tirana, which is the only judicial review instance for election disputes.

A CEAZ decision on results cannot be appealed directly in the Electoral College, even when that CEAZ is in fact the CEC acting as the Tirana CEAZ – appeals would first be sent to the CEC to act on in its capacity as the CEC. Such decisions are reviewed again by the CEC itself in accordance with type-2 procedures of appeal.

In the case of Tirana, a borough CEAZ can review, in accordance with type 1 those issues related to borough mayoral or council race. Whereas in relation of type-1 complaints for Tirana Municipality mayoral and council race, final competence of review rests with the CEC acting as the Tirana CEAZ.

Tabulation for a zone result is always approved by a 4 to 3 vote in the CEAZ. This is true for both borough CEAZs and the CEAZ for Tirana as a whole. Meanwhile, the CEC needs a 5 to 2 vote to overrule a CEAZ decision on the tabulation in accordance with type-2 procedures. The CEC in its capacity as the Tirana CEAZ is no exception; it approves the tabulation for Tirana by a minimum of four votes. All intermediate decisions that lead to the approval of the tabulation, including decisions to open and count ballot boxes or judge disputes on ballot validity, are also approved by 4 to 3 vote as with any other CEAZ.

The deadline to appeal a CEAZ decision on the zone result is three days, while the CEC has ten days to adjudicate it. If an interested party is not satisfied with the CEC decision on their appeal, they can appeal this decision again with the court no later than five days from the CEC decision. The court decides on these appeals within ten days.

The deadline to appeal the Tirana Municipality results to the CEC begins when the CEC tabulates the count in its capacity as the Tirana CEAZ. Tabulations of each borough CEAZ for their part of Tirana municipality result cannot be appealed separately, but jointly with the Tirana CEAZ's tabulation. When the CEC acts as the CEC it needs a 5 to 2 vote to rule on matters that it may have previously adjudicated itself by a 4 to 3 majority when acting as the CEAZ for Tirana Municipality.

There is a strong precedent for higher level commissions taking over the powers of lower commission, based on the principle of administrative hierarchy. In 2001 parliamentary elections, the CEC decided to take over the middle-level commission competence in one zone due to their failure to tabulate the result (ODIHR report on 2001 general elections). In 2003 local elections, due to the failure of Tirana municipality middle-level commission which was in command of the 11 borough commissions, to tabulate the result for Tirana municipality, the CEC took over and tabulated the result. This has continued to happen in 2005 parliamentary elections, 2007 local elections, and in special election for one seat in parliament in 2007. With the approval of the new Code, the CEC has larger powers (as recognized by 2009 ODIHR report in recommendation no. 10 and 27) to intervene and address problems or failures of lower commissions, but is also empowered to act directly as the middle-level commission in Tirana, including the registration of candidates and tabulation of results.

The CEC is acting in accordance with Tirana CEAZ competences, including type-1 complaint review (complaints during the process, and only prior to the tabulation of the result). The CEC acting as the Tirana CEAZ has full power to enact binding instructions prior to the start of the counting, as well as decisions during the count. The CEC has the authority to unify and provide consistency to electoral practices both as the CEC and the Tirana CEAZ. CEC instructions and decisions during the count when acting as the Tirana

CEAZ or during adjudication of post-count appeals (type-2 of review) at the CEC have all the virtue of unifying the electoral practice as long as the CEC maintains a consistent standard. A standard set by the CEC can be disputed only in front of the court and a standard set by the Tirana CEAZ can be disputed to the CEC and then appealed to court.

At the moment, the CEC is acting as the Tirana CEAZ. It has collected information from its 11 subordinate borough CEAZs acting upon a petition from the Democratic Party on the issue of misplaced ballots. While it has to tabulate the result for Tirana Municipality as a whole, a tabulation (which includes all ballots cast both valid and invalid) must include all ballots cast for Mayor or Council. Due to this phenomenon, counting only ballots in the mayor box, in some cases will not make it possible to tabulate all ballots. Hence, it is authorized by the law and obliged by the requests received, to perform an administrative investigation to establish the factual grounds and redress the issue, prior to announcing a result. These ballots misplaced into the boxes for other offices must be included in the mayoral tabulation regardless of whether they are ruled valid or invalid.

It is true that the law does not provide explicit rules for handling misplaced ballots. However, the law requires that all ballots cast in an election be assessed, separated into valid or invalid and both categories be tabulated. The Electoral Code specifically lists eight criteria that would automatically make a ballot invalid and being misplaced into a box for another office is clearly excluded from that list.

The overriding principle (OSCE and Council of Europe standard) enshrined by the law is to consider a ballot as valid when the voter intent is clear. The law provides specific cases for invalidation of ballots, aiming at reducing the possibility of invalidating a ballot. The Code of Good Practice in Electoral Matters of the CoE Venice Commission requests that maximum efforts should be done to consider as much as possible ballots as valid, based on the clearly expressed voter's intent. However, in the end this determination of validity must be made by the CEC as the Tirana CEAZ and it is this process that they are currently investigating and reviewing.

No appeals can be made on the CEC's decision to conduct an administrative investigation acting as the Tirana CEAZ to establish a true result. But any interested party can appeal the result of such investigation: the tabulation of results approved by the CEC in its capacity of Tirana CEAZ. Such tabulation cannot be appealed directly to the court, but the case would be heard first by the CEC along with other appeals. When the CEC has ruled on this decision however, interested parties can appeal to the court.

Mike Burns

From: John Anderson
Sent: Wednesday, May 18, 2011 7:55 AM
To: John Anderson
Subject: Albania elections

Greetings all, and forgive this e-interruption, which is on background.

Just a plea for your continued patience on the vote in Tirana. It is ironic, but the high standard of transparency and fairness (counting votes one-by-one; including both parties in decisions etc.) is contributing to the delay in finalizing the vote. The CEC has NOT declared a winner yet, and as you know, there is an approved process that they are painstakingly working through. This is not something unique to Albania; it's more of a hallmark of close contests. Recall that the 2000 US presidential election results were in doubt for days because of the close and contested count in Florida, where ballots counters were filmed debating and analyzing "hanging chads." And the process in Tirana is being closely watched by foreign observers, who are urging patience and adherence to the process. According to a statement from the US Embassy: **"This was a victory for Albanian democracy and the Albanian people. With both sides claiming victory, it is especially important to wait for the results to be certified in accordance with the Electoral Code."**

If you are having trouble reaching government officials to interview about the elections, let me know and I will try to help connect you. Cheers.....John Anderson/Podesta Group ...tel. +1 240 393 0982

Mike Burns

From: John Anderson
Sent: Wednesday, May 18, 2011 8:01 AM
To: John Anderson
Subject: Albania eleiotns - corrected

Sorry all. Please spike the note just sent and refer to this one. Cheers.

Greetings all, and forgive this e-interruption, which is on background.

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